

RULE 72. PROBATE ACCOUNTS

[Text of rule applicable to actions with a return date on or before June 30, 2011. See, also, Probate Court Rule _____ applicable to actions with a return date on or after July 1, 2011 and Standing Order _____ for procedural steps occurring on or after July 1, 2011 of pending actions commenced on or before June 30, 2011.]

(a) Accounts With Written Assent. If a fiduciary files with his account: (1) the proper filing fee; (2) the written assent or waiver of every person interested in the account, including every person entitled to notice pursuant to G.L. c. 190B, §§ 1-401 and 5-418; and (3) all tax receipts or tax waivers required by law, the court may forthwith allow the account. If any interested person is incompetent or under lawful age, or as defined in G.L. c. 190B a protected person or an incapacitated person, the conservator or guardian, as the case may be, shall sign the assent, unless the account is his own account.

(b) Accounts Without Written Assent.

(1) *Notice: Form.* If the account of a fiduciary is filed for allowance with the proper filing fee and all tax receipts or tax waivers required by law but without the written assent of every person interested in the account, notice of the proceeding for allowance of a fiduciary account or the account of a common trust fund shall be served in accordance with Rule 4(h) on those persons required to be served by G.L. c. 190B, §§ 1-401 and 5-418. The notice in the form of a citation issued by the court shall state a return date pursuant to General Rule 6 of the Probate Courts and state that any person having an interest affected by the account:

(A) may (and, if he desires to preserve his right to file an objection, shall) file an appearance in accordance with Rule 11(b)(2) on or before the return day;

(B) may, upon written request to the accountant (fiduciary) or counsel by registered or certified mail, obtain without cost to himself, a copy of the account except that, in a proceeding for the allowance of an account of a common trust fund, the notice shall state that any person so requesting may obtain without cost to himself a copy of the annual report of said common trust fund for the period of the account, and may obtain a copy of the account on request, subject to such terms, if any, as to costs which the court may determine upon application of the accountant; and

(C) shall, if he desires to object to any item of the account, file within thirty days after the return day (or such other time as the court, on motion with notice to the accountant, may order) a written statement of each such item, together with the grounds for each objection thereto, a copy thereof to be served upon the accountant pursuant to Rule 5.

(2) *Guardian Ad Litem.* Whenever the court shall, conformably to law, appoint a guardian ad litem to represent any individual or class concerned in the account, the accountant shall forthwith serve upon such guardian ad litem, without cost to the guardian, a copy of the account and the citation. The guardian ad litem shall within ninety days after the return day file his report, serving a copy thereof upon the accountant and any person who has filed an appearance; provided that the court may upon ex parte application of the guardian ad litem extend the time for filing such report for an additional twenty days or such further time as the court, on motion with notice to the accountant and any person who has filed an appearance, may order.

(3) *Failure to Object: Effect.* If any person who has filed an appearance shall fail to file an objection within the time specified by par. (b)(1)(C) of this rule, the court, upon motion by the accountant, the guardian ad litem, or any person whose objection is on file (with notice, as the case may be, to the person filing the appearance, the accountant, and any person whose objection is on file), may order the appearance struck.

(4) *Objection: Effect.* If, at any time, there shall have been filed either (A) an objection pursuant to par. (b)(1)(C) of this rule; or (B) a guardian ad litem's report containing an objection, the account shall thenceforth be regarded as contested, and further proceedings shall be governed

by the following rules, in addition to this rule, and none other: Rules 1, 4(h), 5, 6, 7(b)-(c), 10(a) (fast sentence, except that the caption shall retain the title and docket number of the underlying Probate Court proceedings), 11(a)-(d), 15, 16, 25-37, 40, 42-46, 52-54, 56-59, 60 (except that the provisions of G.L. c. 206, s. 24, shall govern the granting of any relief under Rule 60[b]; and Rule 60[b][3] shall not apply); 61-65(a)-(d), 65.1, 67-71, 77-83, 85. Any reference in any of the specified rules to “plaintiff” or “defendant,” or to any particular type of pleading, shall not apply to any proceeding under this rule, except that the word “pleading” as it may appear in those rules shall be taken to include account, objection, or report, as the case may be.

(5) *Objection. Withdrawal; Striking.*

(A) Any objection previously filed, whether by an interested person or a guardian ad litem, may be withdrawn by filing a statement to that effect, signed by the person or the guardian ad litem, as the case may be, or counsel, and served on any person (including, as necessary, the guardian ad litem) whose appearance is then on file. The conservator or guardian of an interested person shall sign for the ward, incapacitated or protected person.

(B) The court, upon motion by the accountant, the guardian ad litem, or any person whose objection is on file (with notice, as the case may be, to the accountant, the guardian ad litem, and any person whose objection is on file) may order any objection struck for failure to state a valid ground of objection, for frivolity, or for any other similar reason.

(6) *Contested Accounts: Hearings.* The accountant, any person whose objection is then on file, or the guardian ad litem may mark a contested account for hearing, or request that the court assign, a hearing date; or the court may, of its own motion, assign a hearing date.

(7) *Uncontested Accounts.* An account shall be regarded as uncontested if:

(A) It shall have been filed pursuant to par. (a) of this rule; or

(B) After the return day (i) either no appearance shall be on file or any appearance or objection previously filed shall have been withdrawn or struck; and (ii) the report of the guardian ad litem, if any, shall be on file and contain no objection.

Judgment on any uncontested account may be entered forthwith subject only to the provisions of Rule 60 (except that the provisions of G.L. c. 206, § 24, shall govern the granting of any relief under Rule 60[b]; and Rule 60[b][3] shall not apply).

Adopted February 4, 1977, effective July 1, 1977. Amended June 24, 2009, effective July 1, 2009-.

Reporter’s Notes – 2009

The 2009 amendments reflect changes resulting from the adoption of the Massachusetts Uniform Probate Code.